सेवाकर आयुक्त का कार्यालय

OFFICE OF THE PRINCIPAL COMMISSIONER OF SERVICE TAX

हैदराबाद- सेवाकर आयुक्तालय SERVICE TAX COMMISSIONERATE

11-5-423/1/A :: SITARAM PRASAD TOWER :: RED HILLS :: HYDERABAD-500 004.

O.R. No. 22/2016-Adjn.(ST)(JC) **Dt. 15.04.2016.**
C. No. IV/16/62/2012- ST.Gr.X

SHOW CAUSE NOTICE

(Notice under Section 73(1A) of the Finance Act, 1994)

Sub: Service Tax – M/s.Alpine Estates, Hyderabad – Non-payment of Service Tax - Issue of Show Cause Notice – Regarding.

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M/s.Alpine Estates., 5-4-187/3 & 4, 2nd Floor, Soham Mansion, M.G.Road, Secunderabad- 500 003 (hereinafter referred to as **'M/s.Alpine' or "the Assessee"** for short) have registered themselves with the Service Tax Department vide **Registration No.AANFA5250FST001**, for payment of Service Tax under the categories of "Works Contract service" and "Construction of Residential Complex service".

2. As seen from the records, the Assessee entered into 1).Sale deed for sale of undivided portion of land together with semi-finished portion of the flat and 2).Agreement for construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by the Assessee thereafter to their customers under agreement of construction are taxable under Service Tax as there exists service provider and receiver relationship between them. As transfer of property in goods in execution of the said construction agreements is involved, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold **are taxable services under "Works Contract Service".**

3. Accordingly, the following Show Cause Notice had been issued to the Assessee:

Sl. No.	SCN OR No. & date	Period	Amount of Service Tax demanded (Rs.)	Status
1.	HQPOR No.82/2010-Adjn(ST) dated 16.06.2010	01/2009 to 12/2009	31,10,377	Confirmed vide OIO No.44/2010-St dt.15.10.2010. Party's appeal was dismissed vide OIA No.08/2011-(H-II) dt.31.01.2011. CESTAT granted Stay on 25.04.2012 vide Stay Order No.666 & 667/2012 with the condition of Pre-deposit of Rs.10 Lakhs vide Misc. Order No.21877/2014 dt.31.07.2014 extended stay for six months from 31.07.2014.
2.	OR No.62/2011-Adjn(ST) dt.23.04.2011	01/2010 to 12/2010	35,03,113	Confirmed vide OIO No.49/2012-Adjn(ST)(ADC) dt.31.08.2012. Ordered Denova by the Commr.(Appeals) vide OIA No.38/2013-(H-II) S.Tax dt.27.02.2013 for re-quantification of the service tax payable.
3.	OR No.51/2012-Adjn.(ADC) dt.24.04.2012	01/2011 to 12/2011	48,33,495	Confirmed vide OIO No.49/2012-Adjn(ST)(ADC) dt.31.08.2012. Ordered Denova by the Commr.(Appeals) vide OIA No.38/2013-(H-II) S.Tax dt.27.02.2013 for re-quantification of the service tax payable.
4.	OR No.82/2013-Adjn.(ST)(ADC), dt.02.12.2013	01/2012 to 06/2012	30,39,597	Pending Adjudication
5.	OR No.161/2014-Adjn.(ST)(Commr), dt.26.09.2014	07/2012 to 03/2014	1,23,37,565	Confirmed vide OIO No.HYD-S.TAX-COM-03/2015 dated 31.08.2015. Assessee preferred appeal before Hon'ble CESTAT, Bangalore.

4. As per the information furnished by the Assessee vide their letter dated Nil received by the Jurisdictional Range Superintendent on 31.03.2016, it is seen that **"the Assessee"** have rendered taxable services under the category of "Works Contract Services" during the period **April, 2014 to March, 2015**. The Assessee had rendered services for a taxable value of **Rs.1,50,71,694/- (Rupees One Crore Fifty Lakhs Seventy one thousand Six Hundred and Ninety four only)**. After deduction of VAT of Rs.21,18,795/- the taxable value works out to **Rs.1,29,52,899/-** on which service tax (including cesses) works out to **Rs.6,40,391/-** for the services rendered during the said period, as detailed below:

	Before Occupancy Certificate is obtained	After Occupancy Certificate is obtained	**Total**
Gross Receipts	5,79,618	1,44,92,076	**1,50,71,694**
Less: Construction Agreement Value	79,173	4,900	
Gross Sale Deed Value	-	1,28,68,826	
Less: VAT & Registration	5,00,445	16,18,350	**21,18,795**
Net Taxable Value	79,173	1,28,73,726	**1,29,52,899**
Tax Rate	4.944%	4.944%	
Service Tax Payable	3914	6,36,477	**6,40,391**

5. Vide Finance Act, 2012 sub section (1A) was inserted in Section 73 which reads as under:

> ***SECTION 73(1A)*** *- Notwithstanding anything contained in sub-section (1), the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.*

6. The section **65B, 66B, 66D** as inserted in the Finance Act, 1994 by the Finance Act, 2012 w.e.f. 01.07.2012 are reproduced below:

6.1. ***SECTION 65B(44):*** *"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include— (a) an activity which constitutes merely,— (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or (ii) a transaction in money or actionable claim; (b) a provision of service by an employee to the employer in the course of or in relation to his employment; (c) fees taken in any Court or tribunal established under any law for the time being in force.*

6.2. ***SECTION 66B.-*** *There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.*

6.3. **SECTION 66D:** Contains the negative list of services. It appears that services provided by the Assessee are not covered under any of the services listed therein.

6.4. **SECTION 66E:** Contains declared service and work contract is covered under 66E(h) of the Finance Act, 1994.

6.5. Further, Notification No.25/2012-ST, dated 20.06.2012, as amended specified services which were exempt from payment of Service Tax. It appears that services provided by the Assessee are not covered under any of the services listed therein.

7. The grounds as explained in the Show Cause cum demand notices issued above are also applicable to the present case; the legal position in so far as **"Works Contract Service"** is concerned, the said service and its taxability as defined under Sub-clause (zzzza) of Clause 105 of Section 65 of the Finance Act, 1994 as existed before 01.07.2012 stands now covered by 65B(54) whereby the said service being declared service under Section 66E(h) of Finance Act, 1994 and for not being in the Negative List prescribed under 66D, continues to be a taxable service. But for the said changes in legal provision, the status of Service and the corresponding tax liability remained same. Hence, this statement of demand/show cause notice is issued in terms of **Section 73(1A)** of the **Finance Act, 1994** for the period **April, 2014 and March, 2015.**

8. In view of the above, **M/s.Alpine Estates, Hyderabad** are hereby required to show cause to the **Joint Commissioner of Service Tax, Office of the Principal Commissioner of Service Tax, Hyderabad Service Tax Commissionerate, 11-5-423/1/A, Sitaram Prasad Towers, Red Hills, Hyderabad-4,** within **30(thirty) days** of receipt of this notice as to why:-

i). an amount of **Rs.6,46,391/- (Rupees Six Lakhs Forty thousand Three hundred and Ninety one only)** (including Cesses) should not be demanded as per **Para-4** above towards "Works Contract Service" rendered by them during **April, 2014 to March, 2015,** in terms of Section 73 (1) of the Finance Act, 1994; on the grounds discussed supra; and

ii). **Interest** should not be demanded at (i) above, under Section 75 of the Finance Act, 1994; and

iii). **Penalty** should not be imposed on them under Section 76 of the Finance Act, 1994, for the contravention of Rules and provisions of the Finance Act, 1994; and

iv). **Penalty** should not be imposed on them under Section 77 of the Finance Act, 1994.

9. M/s.Alpine Estates., are required to produce all the evidence upon which they intend to rely in their defense while showing cause. They are also required to indicate in their written reply whether they wish to be heard in person before the case is adjudicated.

10. If no cause is shown against the action proposed to be taken within the stipulated time and if the noticee does not appear for the personal hearing on the appointed day, then it will be presumed that they do not have anything to state in their defence and the case will be decided on merits on the basis of evidence available on records.

11. This Notice is issued without prejudice to any other action that has been or may be taken against the noticee / others under this Act or under any other law for the time being in force in India.

12. M/s. Alpine Estates, has obtained Service Tax registration on 29.02.2008 and filed the ST-3 return for the period April' 2014 to September' 2014 on 22.10.2014 (Due date being on 14.11.2014) and hence, **the last date for issuance of this Notice is 21.04.2016** under section 73(1) of the Finance Act, 1994.

13. Reliance for issue of this Notice is placed on the following:

(i) Assessee's letter dated Nil received by the Jurisdictional Range Superintendent on 31.03.2016, in which service tax consolidated statement is provided.

Place: Hyderabad

Date: 15.04.2016.

(PRABHU DAS PULI)
JOINT COMMISSIONER

To
M/s. Alpine Estates.,
Address: 5-4-187/3 & 4, 2nd Floor,
Soham Mansion,
M.G.Road,
Secunderabad- 500 003.

//By SPEED POST//

Copy to:

1. The Assistant Commissioner of Central Excise (Service Tax), Division-II, Service Tax Commissionerate, Hyderabad for information and necessary action.

2. The Superintendent, Service Tax, Range-IIA, Service Tax Commissionerate, with direction to serve the Notice on the assessee and submit dated Acknowledgement to this office.

3. The Superintendent of Service Tax (Adjudication), Service Tax Commissionerate, along with copies of all relied documents.